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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,796	12/31/2001	Marcille F. Ruman	KCC 4767 (K.C. NO. 17,080)	2941
321	7590	04/29/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			REICHLER, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 04/29/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,796

Applicant(s)

RUMAN ET AL.

Examiner

Karin M. Reichle.

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-19, 21-23 and 25-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-15, 21-23, 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-19, 25-27, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>13</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-15, 21-23 and 28-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

Claims 25-27 will now be considered. Applicant's remarks on pages 9-10 have been considered but were not deemed persuasive because the claims were not withdrawn because of the timing alone but rather because claim 25 appeared to be directed to engagement and sliding during manufacture not placement on the wearer, i.e. "initial assembly" and "prefastened", but the description of such manufacture methods describe species of methods in which retraction is activated, i.e. activation station 206 and activation and retraction stage 303, or in other words. because such timing was combined with the species of activating, i.e. a nonelected species, whereas the elected species is described with regard to manual manipulation as the garment is placed on the wearer, see page 32, lines 5-17, i.e. retraction is merely allowed to take place without activation. Since the claim has been amended to remove the timing terms of "prefastened" and "upon initial assembly", claims 25-27 are now considered to read on the elected species.

Specification

2. The amendment filed 2-19-04 did not comply with 37 CFR 1.121 with regard to claims 1-15 because it did not show any text thereof and with respect to claim 25 because it did not

Art Unit: 3761

show all the changes made by underlining and strike thru. With regard to claim 25 the claim was brought into compliance with red ink changes by the Examiner. Future responses, if any, should present the text of the withdrawn claims.

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Drawings

4. The drawings were received on 2-19-04. These drawings are approved by the Examiner. However note the accompanying PTO-948.

Description

5. The disclosure is objected to because of the following informalities: The Summary of the Invention section, i.e. a description of the claimed invention, and the invention as claimed should be commensurate in scope prior to allowance, if any, see MPEP 608.01(d) and 1302.01.

Appropriate correction is required.

Claim Objections

6. Claims 26-27 are objected to because of the following informalities: on line 1, "A" should be --The--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claim 31 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 31 now claims the loop component having a stretchability of ***up to at least about*** 150% or in other words that the stretchability of the loop component is $\geq 0\%$. While page 33, lines 10-19 disclose that a wide range of materials can be used, these materials are disclosed as having to be sufficiently stretchable to exhibit the desired enhanced engagement capabilities or having a specific percent stretchability which is not what is claimed. Where is a stretchability of greater than or equal to 0% originally set forth? If Applicant traverses this rejection the specific portion of the specification relied upon should be set forth. Also note the following rejection.

8. Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As set forth in the preceding paragraph, it is now claimed that the stretchability of the loop component is greater than or equal to 0%, i.e. "up to at least". However claim 30 from which it depends claims the loop component is capable of elastic stretch and retraction. Therefore it is unclear whether the loop component at a minimum is considered to be elastically stretchable (It is noted that something that is stretchable is not necessarily elastic) as claimed in claim 30 or have a stretchability of greater than or equal to 0%? If the latter such is actually

Art Unit: 3761

broader than the elastic stretchability required by the claim 30 it depends from, i.e. it fails to further limit the claim from which it depends.

Claim Interpretation Section

9. The terminology "article ... for personal wear" has not been specifically defined and therefore will be given its ordinary meaning, i.e. an article which is worn on the person. It is further noted that the claims do not require entanglement of the hook component and the loop component but rather fastenable engagement of the two components. It is also noted that the loop material itself is not required to be elastic only the component it is a part of is claimed as elastic in some of the claims. Due to the lack of clarity with regard to claim 31, the claim will be interpreted to require just some % greater than about 0% elastic stretchability. The terminology "secured" has also not been specifically defined and therefore will be interpreted as direct or indirect securement.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sommers et al, '401.

See Figures, i.e. the retaining device is an article which is worn on the person and includes a hook component 30 and a loop material 26 secured to a substrate, i.e. at least one of the layers of the stretch bonded laminate making up strip 10 underlying the loop material, and col. 10, lines 25-40, i.e. the fastening components of the article are secured in engagement by arranging, engaging and urging by retraction as claimed. See also col. 9, lines 52-59.

13. Claims 17-19, 25-27 and 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by LaFortune et al '901.

With regard to claims 17, 25-27 and 30, see Figures 1-7 and 9, col. 4, lines 31-42, col. 5, lines 1-4 and 25-51, i.e. the absorbent article for personal use is 20 and is formed to have a body 42 having first and second end regions, 30, 32, and comprises an inner layer 44, an outer layer 40 and an absorbent core 42, col. 7, line 42-col. 8, line 14, col. 10, lines 44-49, col. 12, lines 37-40, col. 13, lines 17-21 and col. 15, lines 5-18, i.e. a mechanical fastening system is positioned on the body 42 including a loop component and a hook component, one is 52, the other is 54 and 50 and 54 is secured to 50, which is an elastic substrate, such that 50 is capable of elastic stretch and retraction, col. 13, lines 17-30, col. 10, lines 15-29, and thereby Kuen '595 at col. 11, lines 5-30, i.e. the loop component is manually stretched around the wearer in a direction toward the downwardly slanted component and into opposed relationship thereto, engaged with the hook component and released so as to allow or provide an upward force or tension, i.e. a retractive force or urged sliding movement. With regard to claims 18-19 and 31, see col. 10, lines 47-49, i.e. stretching by about 280-300 %. It is the Examiner's first position that the LaFortune et al reference explicitly teaches the claimed method. In any case the LaFortune et al device is the same as the device described for carrying out the claimed method. Therefore there is sufficient

Art Unit: 3761

factual basis to conclude the La Fortune device would inherently perform the claimed process, see MPEP 2112.02.

Claim Rejections - 35 USC § 102/103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 27 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sommers et al '401.

It is the Examiner's first position that since col. 10, lines 25-40 set forth that the elastic strip 10 is stretched and then released to allow retraction that the loop component, i.e. the loop material 26 and the portion of elastic strip underlying the material, is also stretched and then released and retracted. In any case, it is well known to attach the ends of an elastic band under tension by grabbing either one of the ends and stretching it to bring it into engaging contact with the other end which is stationary or by grabbing both ends and stretching them to bring them into engaging contact with each other. Therefore, to attach the ends of the elastic strip of Sommers under tension by stretching the one end including the loop component, bringing it into engaging contact with the other end and releasing the one end so that the one end, i.e. loop component, retracts, if not already, would be obvious to one of ordinary skill in the art in view of the well known interchangeability of methods of attachment.

Response to Arguments

16. Applicants remarks with regard to the matters of form have been noted but are either deemed moot in that they have not been reraised or are deemed not persuasive in light of the objections and rejections supra. Applicants remarks with regard to the prior art on pages 11 et seq have been noted but are deemed moot in that the Widlund patent has not been reapplied. It is noted with regard to page 14, second full paragraph thereof that while the discussed fasteners and loop material would be recognized as a possible loop component, the claim language "loop component" is not limited thereto. Note page 1, lines 13-14, page 24, line 28-page 25, line 1 and page 25, lines 18-20 of Applicant's disclosure. Also Applicant's remarks on page 15, lines 3-4 are deemed inconsistent with Widlund at col. 7, line 10. It is also noted that the Guevara et al and Coslovi et al references already of record also teach the claimed method with a fastening component, i.e. the hook fastening component.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The MEDIPANT reference also teaches the claimed method with a hook component.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3761


the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The amendments to claim 25-27 and 17-19 and new claims 30-31 necessitated any new grounds of rejection.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
April 21, 2004